

QUESTIONS FOR ED GAFFNEY, LIQUOR CONTROL COMMISSION APPOINTEE

1. How would you describe the primary function of the Liquor Control Commission (LCC) and what would your guiding philosophy be in carrying out your duties with the commission?

The primary function of the LCC is to control the distribution, sale, delivery, importation and storage of alcoholic beverages. The LCC enforces the laws enacted by the Legislature. As a hearing commissioner, my guiding philosophy in carrying out the duties of the commission will be to enforce the letter of the law of the Liquor Control Act, other pertinent statutes and the rules and regulations of the LCC in a fair and unbiased manner.

2. What experience do you have in dealing with liquor control issues?

As a member of the House of Representatives from 2002-2008, I served on the Regulatory Reform Committee for 6 years. This Committee handled all LCC related issues in the House. Also, I have had constituents who have had liquor control issues where I served as an intermediary between the retailer and the LCC. In addition, my wife and I raised three boys the youngest of which is now 23. We personally saw first hand the pressure young people are under to give in to peer pressure and consume alcoholic beverages (2 Spartans and 1 Bronco, enough said).

3. Do you think Michigan's liquor control system is working well? If not, then what do you believe is wrong and how would you fix it?

The liquor control system is working well. The best thing I can do to make it work better is to do my job as hearing commissioner to the best of my ability in fair, unbiased and professional manner.

4. What is your view of the current tax and fee structure administered by the LCC? Would you make any changes?

I do not believe it is within the LCC's authority to adjust fees and taxes.

5. What is your view of the "three tier system" (whereby there must be a wholesaler, a distributor and a retailer, each of whom must act independently and present no conflict of interest)? Do you think this should be changed? If so, how?

The three tier system is working quite well. It has produced a market for alcoholic beverages that is highly efficient, competitive, and responsive to local concerns and control. The system should not be changed.

The three tier system insulates retailers from direct and indirect control of suppliers. It ensures that the sale of beer and wine occurs in a controlled, licensed environment. It also prohibits outlandish promotion of alcoholic beverages, inhibits sales to minors and penalizes licensees for sales to intoxicated persons.

It maximizes consumer choice by leveling the playing field so that every licensed retailer can have the widest selection of brands possible, at competitive prices. Since big players do not dominate the market, under this system, new specialty beer and wine and small suppliers are given a fair chance in accessing the market.

The three tier system is an efficient collection method for state excise taxes. Excise taxes of roughly \$58,000,000 per year in taxes are collected for beer and wine alone. Another \$143 million in sales taxes is collected on these products. The total revenue raised from all sources by the LCC was about \$350,000,000 last year. The independent wholesaler tier is the verification system used by the state to confirm beer and wine shipments into Michigan and to ensure that the proper excise taxes are paid.

It facilitates the effective enforcement of the Liquor Control Act. This is because the source of a violation can easily be traced because under this system it is known which licensees are selling which products in which market. The system also is most effective in protecting the public against contaminated or improperly labeled products.

6. Should Michigan have a special winery license that would allow Michigan wineries to conduct tastings and sell more freely at retail—like wine events, farms markets, fairs, etc. as is done in other states?

Michigan wineries currently may conduct tasting at a licensed winery or at a licensed off site retail outlet. I think the state needs to encourage agriculture and entrepreneurs. The bulk of new jobs are created by small businesses. All small businesses are important and need to be allowed to expand and flourish. It is hoped that the dire state economy will foster an attitude of cooperation between state wineries and other stakeholders so that development of state wineries as growing and profitable businesses can take place, and perhaps allow tastings and sales at farm markets. Of course, this change in the law would have to come from the Legislature.

7. What is your view of dual appointments for wine wholesalers? (Currently wine is the only alcoholic beverage sold in the private sector that does not have exclusive territories. Thus, a winery can appoint more than one wholesaler for its brands in the same area.)

I have not seen any evidence that this system needs to be changed. I would support exclusive territories for wine if it was established that a regulatory need or purpose would be served by them. This change would have to come from the

Legislature. If the Legislature changes the law, then the LCC would enforce the law as amended.

8. Earlier this year, the Governor signed a bill that prohibits liquor retailers from selling directly to consumers unless the product is delivered by an employee of the business. What is your position on providing exemptions for gift baskets, specialty products and other such unique items?

This legislation was needed due to a recent federal court decision that would have (absent state legislation) opened Michigan's market to the unregulated flow of all types of alcoholic beverages from out of state retailers. This is because the federal court viewed the previous statute as violating the US Constitution's commerce clause.

This exemption could make liquor more difficult to control. Under the current three tier system the source of a violation can easily be traced because under this system it is known which licensees are selling which products in which market. If this exemption were to be allowed, the responsibility for a violation involving delivery of an alcoholic beverage could be disputed. It could become less clear that is responsible for a violation.

Also, there is the possibility the exemption could swallow the rule. So why make changes to a system that is working well and clearly points out where responsibility for a violation is to be placed? This is especially true where there is no evidence for a demonstrated need for such an exemption.

9. Last year the commission completed a report on the illegal importation of liquor into Michigan. Do you support the recommendations in the report? How do you plan to work with other commissioners to implement the recommendations?

I support the recommendations of the commission as found in the report on the illegal importation of liquor into Michigan. These recommendations were:

- Increase penalties for the illegal importation of alcohol and appropriations for law enforcement
- Partner with local law enforcement agencies to reduce the illegal importation of alcohol
- Utilize available technology to reduce illegal importation of alcohol
- Education and training of law enforcement officers and retail licensees

While I support the above recommendations, as a hearing commissioner there is very little I can do to implement these items. It seems to me that these measures would require legislative action, either a change in the law or an appropriation of funds.

10. How would you handle the situation if you were to have a relative, friend or business associate come before the LCC on an issue?

In this instance, I would recuse myself from the issue that came before LCC. That is, I would excuse myself from the case to avoid any appearance of impropriety.

11. Please explain how you would ensure that LCC proposals adhere to applicable statutes?

The rules proposed by the LCC should never have the effect of repealing or substantively amending the applicable statute. The policy laid out in statute is the law, and anything the LCC proposes should be merely to implement the mandate of the statute.

The statute itself should give LCC authority to promulgate rules. Before any proposal is proposed, the members and staff of the LCC should perform due diligence. As part of the LCC, I would make it a practice to check with the Attorney General's staff assigned to liquor control and other licensing staff to make sure the scope of the proposal is within statutory authority.

12. What is your view of the use of "secondary use" items (promotional items such as Budweiser coasters, illuminated signs, etc.) in licensed establishments? Do you believe the current system of prohibiting these items should be changed? If so, how?

These type of promotional items give big suppliers an advantage over smaller suppliers who in some instances cannot afford "give a ways" or secondary use items. Secondary use items can be seen as form of advertising that increases brand or name recognition. As such, these items would tend to enhance the market position of larger, well financed suppliers. Thus, the prohibition against the distribution of promotional items protects the smaller supplier.